

S.B. CRIMINAL MISC.BAIL APPLICATION NO.4847/2005.

Rajkumar @ Raju
Vs.
State

Date of order : 17/10/2005.

HON'BLE MR.JUSTICE HARBANS LAL

Mr. Pankaj Gupta for the petitioner.
Mr. RP Kuldeep PP for the State.

This bail application u/S.439 Cr.P.C. has been filed by petitioner Rajkumar @ Raju against whom charge-sheet has been filed for offences under Sections 302 and 436 IPC in FIR No.155/2005 PS Nangalrajvtan, District Dausa whose similar bail application has been rejected by the learned Sessions Judge, Dausa vide his order dated 25/8/2005.

It is contended on the strength of the orders in the cases of **Hari Kishan Vs. State of Rajasthan 2005 (1) R.C.C. 282** and the **State of Maharashtra Vs. Mrs.Bharati Chandmal Varma :(2002) 2 SCC 121** that the petitioner was arrested on 13/6/2005 in connection with a case for offence under Section 306 IPC which is punishable with imprisonment which may extend to 10 years and fine. The charge-sheet was filed on 6/9/2005, i.e. after the expiry of the prescribed period of 60 days which was applicable in this case. He has, therefore, submitted that the petitioner is entitled to grant of bail under proviso a(ii) to Section 167(2) Cr.P.C. He has also submitted that as held in the cases of Hari Kishan and State of Maharashtra (supra) the petitioner is entitled to release on bail irrespective of the fact that graver offence under Section 302 IPC has been found to be proved or aided subsequently.

Learned Public Prosecutor also could not controvert these contentions.

I have given my anxious and thoughtful consideration to the submissions made at the bar and have gone through the case law referred to by the learned counsel for the petitioner.

Admittedly, the petitioner was arrested in a case for offence under Section 306 IPC and the charge-sheet was not filed within the maximum prescribed period of 60 days applicable to the case and, therefore, in view of the law laid down in the aforesaid authorities, the petitioner became entitled to be enlarged on bail. His indefeasible right to be released on bail cannot be denied to him or curtailed simply because graver offence has been subsequently found to be proved or aided in the case.

In view of the foregoing discussions therefore, this bail application under Section 439 Cr.P.C. deserves to be and is allowed and it is directed that petitioner Rajkumar @ Raju S/o Ram Lal Bairwa shall be released on bail in FIR No.155/2005 P.S. Nangalrajvtan, District Dausa on his furnishing a personal bond in the sum of Rs.20,000/- together with one surety in the like amount to the satisfaction of the concerned Court for his appearance before that court on all dates of hearing until conclusion of the trial.

(HARBANS LAL), J.

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